



November 7, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication; EB Docket No. 11-43

Dear Ms. Dortch:

On November 3, 2016, Rick Kaplan and the undersigned of the National Association of Broadcasters (NAB), met separately with David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Mignon Clyburn, and Matthew Berry, Chief of Staff to Commissioner Ajit Pai, to discuss certain issues raised in the Notice of Proposed Rulemaking in the above-captioned proceeding.¹

In both meetings, NAB explained that the Commission lacks the requisite statutory authority under the Twenty-First Century Communications and Video Accessibility Act of 2010² to adopt certain major expansions of the video description rules proposed in the Notice. Specifically, the Commission has failed to meet its statutory obligation under Section 202(f)(4) of the CVAA to justify additional rules based on a meaningful analysis of the need for and benefits of providing video description compared to the technical and economic costs of providing additional video described programming.³ We noted that the record contains only a scant few anecdotal compliments of video description, and is utterly devoid of any data or survey of actual consumer use, preferences or demand for video described programming. NAB stated that such an effort is required for purposes of the Commission's decision-making integrity.

In particular, we noted that the Commission has not justified adoption of its proposals to increase the number of broadcast networks subject to the video description rules, or the so-called "no backsliding" policy that would ensure that a

¹ *Video Description: Implementation of the Twenty First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, MB Docket No. 11-43, 31 FCC Rcd 2463 (2016) (Notice).

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CVAA or Act); H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess., at 1, (2010); 47 C.F.R. § 79.3.

³ 47 U.S.C. § 613(f)(4).

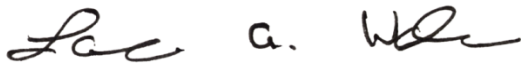
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network and its affiliates remain subject to the rules even if the network falls off the list of “top four” broadcast networks specified in the CVAA. Neither proposal is contemplated in the CVAA. Indeed, under the Commission’s interpretation of the CVAA, the Commission would possess virtually limitless authority to increase or expand the video description obligations. The Commission appears poised to unlawfully presume statutory authority to adopt video description rules where none exists, thereby repeating the mistakes of its first attempt to do so, which the D.C. Circuit Court of Appeals correctly vacated in 2002.⁴

Finally, we discussed the burden on broadcast networks of implementing the proposed 75 percent increase in the required number of hours of video described programming per quarter. NAB urged the Commission to allow broadcasters more flexibility to meet this new quota, for example, by permitting non-children’s programming and non-primetime programming to count toward this new obligation. Similarly, we asked the Commission to reconsider the current limits on the number of repeated programs that are eligible to meet this new minimum.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry A. Walke". The signature is fluid and cursive, with the first name "Larry" being more prominent than the last name "Walke".

Larry Walke

cc: David Grossman
Matthew Berry

⁴ *Motion Picture Ass’n of Am., Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002) (MPAA).